IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

Crl.MC.No. 3511 of 2007()

CC.723/2006 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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PETITIONER: ACCUSED 1 TO 8

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1. SREEPRAKASH, S/O KRISHNANKUTTY,
AGED 30 YEARS, KALACKATUPADETETHIL,
KADAVOOR MURI, KANNAMANGALAM VILLAGE,
MAVELIKARA.

2. PADMAKUMAR, S/O PODIYAN,
AGED 30 YEARS, KUNJAPALILKIZHAKETHIL,
KANNAMANGALAM VILLAGE, MAVELIKARA.

3. SHIVAPRASAD, S/O SHIVAN,
AGED 28 YEARS, VENMELIL AKSHAYA NIVAS,
KANNAMANGALAM VILLAGE, MAVELIKARA.

4. RATHEESH, S/O RAVINDRAN,
AGED 28 YEARS, MANGALATHU KIZHAKETHIL,
ANJALIPARA MURI, KANNAMANGALAM VILLAGE,
MAVELIKARA.

5. SANEESH, S/O SADHANANDAN,
AGED 26 YEARS, NADAYIL VADAKETHIL,
ANJALIPARA MURI, KANNAMANGALAM VILLAGE,
MAVELIKARA.

6. VINODKRISHNAN, S/O KRISHNAN,
AGED 27 YEARS, CHUDUKATTIL PADETETHIL,
MATTOM NORTH, KANNAMANGALAM VILLAGE,
MAVELIKARA.

7. BALACHANDRAN, AGED 28 YEARS,
KOLLASSERIL VEEDU, ANJALIPARA MURI,
KANNAMANGALAM VILLAGE, MAVELIKARA.

8. ARAVINDAN, S/O THANKACHAN,
CHENILAYATHUVEEDU, MATTOMVADAKU MURI,
KANNAMANGALAM VILLAGE, MAVELIKARA.

BY ADV. SRI.G.PRIYADARSAN THAMPI

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, MAVELIKARA POLICE STATION
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY P.P. SRI.M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3511 OF 2007

Dated this the 22nd day of November, 2007

ORDER

The petitioners face indictment in a prosecution for offences punishable, inter alia, under Secs.323 and 447 read with Sec.149 of the IPC. All offences alleged are bailable offences, it is submitted. On 26/9/07, when the matter came up for hearing, accused were absent. An application was filed on their behalf to condone their absence. That application was dismissed. Their bail bonds were cancelled and straightaway non-bailable warrants of arrest were issued to the petitioners and notices were ordered to the sureties. The learned counsel for the petitioners submits that the matter was not posted for trial on that day and stood posted for framing charges only.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Their absence on that

day was not wilful or deliberate. They were represented by their counsel. Straightaway, non-bailable warrants of arrest were issued against the petitioners contrary to the dictum in **Inder Mohan Goswami and another v. State of Uttaranchal** (2007 (4) KHC 360 (SC) SN). The petitioners are prepared to surrender before the learned Magistrate and seek regular bail. But they apprehend that their applications for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioners' applications for regular bail on merits, in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioners surrenders before the learned

Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

5. In the peculiar facts and circumstances of this case, there shall be a direction that the warrants of arrest issued against the petitioners on 26/9/07 shall not be executed till 12/12/2007. On or before that day, the petitioners can appear before the learned Magistrate and seek regular bail.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge